

In re: DAVID E. SMITH, d/b/a PERRY HOG MARKET, HASTINGS PORK, INC., JIMMIE ROGERS, INC., RODOLFO CABRERA, JR., MARY'S RANCH, INC., d/b/a CABRERA SLAUGHTERHOUSE, AND RAYMOND HARTMAN.

A.Q. Docket No. 99-0006.

Decision and Order as to Jimmie Rogers, Inc., filed March 28, 2000.

Darlene M. Bolinger, for Complainant.
Respondent, Pro se.

Decision and Order issued by James W. Hunt, Chief Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the interstate movement of pseudorabies infected or exposed swine (9 C.F.R. §§ 85.1 *et seq.*, 71.19), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. § 1.130 *et seq.*

This proceeding was instituted under section 2 of the Act of February 2, 1903, as amended (21 U.S.C. § 111)(Act) and the regulations promulgated thereunder, by a complaint filed on September 23, 1999, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision and Order as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Jimmie Rogers, Inc. is a corporation with a mailing address of Route 1, Box 51, Liberal, Kansas 67901.

2. On or about October 8, 1997, respondent violated 9 C.F.R. §§ 85.3 and 85.5 by moving approximately 631 pseudorabies infected and/or exposed swine from Hastings Nebraska to Perry, Illinois, because the swine were not moved directly to a recognized slaughtering establishment, quarantined herd or quarantined feedlot; the swine were not accompanied by a permit or owner-shipper statement and such permit or statement delivered to the consignee; and the swine were moved without being individually identified or without such identification being listed on records used for the movement, as required.

3. Respondent Jimmie Rogers, Inc. moved 454 pseudorabies infected and/or

exposed swine from Perry, Illinois to Miami, Florida on or about October 8, 1997 in violation of 9 C.F.R. §§ 85.3 and 85.5 because the swine were not accompanied by a permit or owner-shipper statement and such permit or statement delivered to the consignee and the swine were moved without being individually identified or without such identification being listed on records used for the movement, as required.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Act and the regulations issued under the Act. Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of two thousand dollars (\$2,000). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to A.Q. Docket No. 99-0006.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final May 6, 2000.-Editor]
